

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-938, SUB 6  
DOCKET NO. W-1328, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

|   |                           |
|---|---------------------------|
| In the Matter of                                |                           |
| Joint Application by Red Bird Utility Operating | )                         |
| Company, LLC d/b/a Red Bird Water and           | )                         |
| Baytree Waterfront Properties, Inc. for         | )                         |
| Transfer of Public Utility Franchise and for    | )                         |
| Approval of Rates                               | )                         |
|   | ORDER GRANTING RED BIRD'S |
|   | MOTION AND APPROVING      |
|   | CUSTOMER NOTICE           |

BY THE COMMISSION: On October 9, 2020, Red Bird Utility Operating Company, LLC d/b/a Red Bird Water (Red Bird), and Baytree Waterfront Properties, Inc. (Baytree) filed with the Commission an Application for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the wastewater utility system and public utility franchise serving Windemere Pointe Subdivision in Montgomery County, North Carolina, from Baytree to Red Bird and approval of rates. Baytree currently serves 26 residential customers in the Windemere Pointe Subdivision.

Red Bird supplemented the Application several times after the initial filing, with the last supplemental filing occurring on August 2, 2023. On August 9, 2023, the Public Staff filed a letter indicating that this docket now included all the information required for a complete Application.

On September 13, 2023, the Commission issued an Order Scheduling Hearings, Establishing Discovery Guidelines, and Requiring Customer Notice (Scheduling Order). The Scheduling Order required Red Bird to consult with the Public Staff to develop a Notice to Customers (Notice) to be delivered to all affected customers and required the proposed Notice to be filed with the Commission for approval no later than five business days after the date of the Scheduling Order.

On September 20, 2023, the Public Staff filed a letter indicating that after consulting over multiple days, Red Bird and the Public Staff are unable to agree on the content of the required Notice to Customers. The Public Staff contends that in order for customers to make informed decisions, the Notice should contain forecasted future rates, which is based on the information in the Application. The Public Staff states that Red Bird opposes the inclusion of future potential rates in the Notice and the parties have reached an impasse on this point. The Public Staff included its proposed Customer Notice with its letter.

On September 20, 2023, Red Bird filed a Motion for Approval of Notice to Customers along with its proposed Notice. In support of the motion, Red Bird states that it proposes to adopt Baytree's existing Commission-approved rates and any actual future rate increase for any system acquired by Red Bird will be approved by the Commission through a general rate case proceeding. Red Bird disagrees with the Public Staff's attempt to project future rate impacts or future rates in the Notice, contending that it is not possible to accurately predict years in advance all of the relevant factors that will affect rates established in a future general rate case, including rate base, investment, capital structure, cost of money, operating expenses, taxes, etc.

Red Bird states that it has not agreed with past attempts to project future rate impacts or future rates in prior customer notices. According to Red Bird, such projections have been inaccurately described in past notices as future charges for service "proposed" by Red Bird. Red Bird argues that given the number of elements to be determined in a rate case, it is not possible to accurately predict what rates will be approved by the Commission years into the future. Red Bird requests approval of its proposed Notice to Customers and asserts that the Notice accurately states that (i) Red Bird proposes to adopt Baytree's existing rates, (ii) Red Bird anticipates making investments to address specific system needs, and (iii) such investment would cause rates to increase in the future, subject to approval by the Commission.

Based upon the foregoing and the entire record, the Presiding Commissioner finds good cause to grant Red Bird's Motion for Approval of Notice to Customer and approves issuance of the notice in the form attached hereto as Appendix A.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of September, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk

**STATE OF NORTH  
CAROLINA UTILITIES  
COMMISSION RALEIGH**

**NOTICE TO CUSTOMERS  
DOCKET NO. W-938, SUB  
6 DOCKET NO. W-1328,  
SUB 8**

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

Notice is hereby given that Red Bird Utility Operating Company, LLC (Red Bird), 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131, and Baytree Waterfront Properties, Inc. (Baytree), 4 Stanley Drive, Thomasville, North Carolina 27360, filed an Application with the North Carolina Utilities Commission (Commission) for Transfer of Public Utility Franchise and for Approval of Rates (Application) seeking authority to transfer the wastewater utility system and public utility franchise serving Windemere Pointe Subdivision (Windemere) in Montgomery County, North Carolina, from Baytree to Red Bird and for approval of rates.

Upon acquisition, Red Bird plans to make wastewater utility system capital improvements, including pump valve vault improvements, installing new flow monitoring equipment, pump control panels, security fencing, installing new pumps, and discharge piping. Such investments in the Baytree system will eventually result in a rate increase, which will be subject to Commission review and approval in a future rate case.

When Red Bird files a general rate case application with the Commission in the future, Red Bird intends to include the costs of purchasing the Windemere wastewater utility system and its investment in the system in rate base, which would allow Red Bird to recover in rates the reasonable depreciation expense and allow Red Bird the opportunity to earn a return, approved by the Commission, on Red Bird's post-closing investment. Depending on the number of utility systems it has acquired by the time it files a rate case relating to the Baytree system, Red Bird may seek approval of uniform rates across all its North Carolina utility systems, including Windemere.

**EFFECT OF RATES:**

The present rates for Baytree were approved in Docket No. W-938, Sub 3 and have been in effect since April 2, 2002, as adjusted for tax law changes in Docket Nos. W-938, Sub 5 and M-100, Sub 138, effective January 1, 2017. Upon acquisition of the Windemere system, Red Bird proposes to charge the current Commission-approved rates for Windemere.

The present and proposed rates are as follows:

|                                      | <u>Present</u> | <u>Proposed</u> |
|--------------------------------------|----------------|-----------------|
| <u>Monthly Flat Wastewater Rate:</u> | \$ 34.69       | \$ 34.69        |
| <u>Annual Availability Rate:</u>     | \$ 139.90      | \$ 139.90       |

Based on these rates, a residential customer would be billed \$34.69 per month for wastewater utility service.

Red Bird plans to request a rate increase and uniform statewide rates approximately 33 months post-acquisition. The extent of a rate increase that could be requested by Red Bird approximately three years in the future cannot be definitely predicted at this time, but any proposed rate increase will be subject to Commission approval.<sup>1</sup>

#### **PROCEDURES FOR PUBLIC HEARINGS:**

The Commission has scheduled the following hearings on the Application:

Public witness hearing at 7:00 p.m. on Wednesday, October 18, 2023, to be held in the Montgomery County Courthouse, 108 East Main Street, Troy, North Carolina 27321. This hearing may be cancelled if no significant protests are received on or before Wednesday, October 11, 2023.

The public witness hearing on Wednesday, October 18, 2023, will be solely for the purpose of receiving the testimony of customers in accordance with Commission Rule R1-21(g). The Commission reserves the right to limit testimony at the public witness hearing pursuant to Commission Rule R1-21(g)(5).

Expert witness hearing at 1:00 p.m. on Monday, November 6, 2023, and continuing as necessary until concluded. The hearing will be held in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The hearing scheduled for Monday, November 6, 2023, shall be conducted solely for the purpose of receiving testimony of Red Bird, Baytree, the Public Staff, and any other parties of record.

The Public Staff is authorized by statute to represent consumers in proceedings before the Commission. Consumer statements to the Public Staff should include the

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<sup>1</sup> Any future change in rates proposed by Red Bird would require filing a general rate case application pursuant to N.C. Gen. Stat. § 62-134 and approval by the Commission. Future rates are subject to change and would be expected to be more than the current rates.

customer's name, contact information, and any information that the writer wishes to be considered by the Public Staff in its investigation of the matter, and such statements should be addressed to Mr. Christopher J. Ayers, Executive Director, Public Staff, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300. Consumer statements may also be faxed to (919) 715-6704.

Consumer statements may be submitted to the Commission via the web form at <https://www.ncuc.net/contactus.html>. Consumer statements are not evidence unless those persons appear at a public witness hearing and testify concerning the information contained in their consumer statements.

The Attorney General is also authorized by statute to represent the consumers in proceedings before the Commission. Statements to the Attorney General should be addressed to The Honorable Josh Stein, Attorney General, c/o Utilities Section, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001. Written statements may also be e-mailed to [utilityAGO@ncdoj.gov](mailto:utilityAGO@ncdoj.gov).

Persons desiring to intervene in this proceeding as formal parties of record should file a petition to intervene pursuant to Commission Rules R1-5 and R1-19, not later than Wednesday, October 11, 2023. Such petitions should be filed with the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4300. The direct testimony and exhibits of expert witnesses to be presented by intervenors should also be filed with the Commission on or before Tuesday, October 17, 2023.

Information regarding this proceeding can also be accessed from the Commission's website at [www.ncuc.net](http://www.ncuc.net) under Docket Number "W-1328 Sub 8."

This the 25th day of September, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Tamika D. Conyers". The signature is written in a cursive, flowing style.

Tamika D. Conyers, Deputy Clerk

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, mailed with sufficient postage or hand delivered to all affected customers copies of the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket Nos. W-938, Sub 6 and W-1328, Sub 8, and the Notice was mailed or hand delivered by the date specified in the Order.

This the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name of Utility Company

The above-named Applicant, \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated \_\_\_\_\_ in Docket Nos. W-938, Sub 6 and W-1328, Sub 8.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Address

(SEAL) My Commission Expires: \_\_\_\_\_  
Date